11828). The defendant appeared specially and moved to dismiss the action on the ground that jurisdiction had not been properly acquired. *Held*, that the motion be denied. *Sandusky Cement Co.* v. *A. R. Hamilton & Co.*, 273 Fed. 596 (N. D. Ohio).

The terms of the statute under which this action was brought are broad enough to embrace, as subject to garnishment, debts due from the plaintiff. Under this statute the garnishee is not considered a party to the action. *Secor* v. *Witter*, 39 Ohio St. 218, 231. See *Conley* v. *Chilcote*, 25 Ohio St. 320. The result reached in the principal case is not, therefore, open to the objection that one party is both plaintiff and defendant. See *Belknap* v. *Gibbens*, 13 Met. (Mass.) 471. The result is, moreover, in harmony with the decisions under the Custom of London of foreign attachment, the predecessor of the American garnishment statutes. *Paramore* v. *Pain*, Cro. Eliz. 598. See 1 COM. DIG., 1785 ed., 423. See *Graighle* v. *Notnagle*, Fed. Cas. No. 5679. See SERGEANT, ATTACHMENT, 205. Where garnishment statutes are not broad enough in terms to include debts due from the plaintiff, a situation is found analogous to that which existed when the terms in which the Custom of London was averred were similarly restricted. *Nonell* v. *Hullett*, 4 B. & Ald. 646. The principal case is merely a logical application of the doctrine that in garnishment proceedings personal jurisdiction of the defendant is unnecessary. *Harris* v. *Balk*, 198 U. S. 215. The perils to which defendants are exposed by the result in this case afford an added objection to the doctrine to which it is a corollary. See Joseph H. Beale, "Jurisdiction *In Rem* to Compel Payment of Debt," 27 HARV. L. REV. 107. But see Charles E. Carpenter, "Jurisdiction over Debts," 31 HARV. L. REV. 905, 909.

HOMESTEAD — WHAT PROPERTY IS SUBJECT TO MORTGAGE EXECUTED BY HUSBAND ALONE. — By statute, a homestead cannot be mortgaged unless the mortgage is executed by both husband and wife. (1913 N. D. COMP. LAWS, § 5608.) The statute fixes the homestead exemption at $5000. (1913 N. D. COMP. LAWS, § 5605.) A husband and wife executed a mortgage of $2500 on homestead property worth $7200. The husband executed a second mortgage of $1500 on the same property. The second mortgagee seeks to foreclose. *Held*, that the second mortgage is valid. *First National Bank* v. *Hallquist*, 184 N. W. 269 (N. D.).

Where two parcels of land, one homestead and the other not, are validly mortgaged to the same mortgagee, and later a lien attaches to the non-homestead land, it has been held that the first mortgagee must satisfy himself, so far as possible, from the non-homestead land, though this cuts off the second lienholder. *Frick Co.* v. *Ketels*, 42 Kan. 527, 22 Pac. 580; *Butler* v. *Stainback*, 87 N. C. 216; *Cf. Brown* v. *Cozard*, 68 Ill. 178. Similarly, if there is but one piece of property, the value of which exceeds the homestead exemption, and this is sold under a mortgage valid against the homestead, junior liens not valid against the homestead cannot reach the excess proceeds until the homestead value is deducted therefrom. *White* v. *Horton*, 154 Cal. 103, 97 Pac. 70; *In re Barrett's Estate*, 140 Fed. 569 (D. Ore.). This, in effect, is making the homestead exemption a lien on the property, subordinate to a mortgage valid against the homestead, but superior to any other mortgages or liens. Such a result, though not undisputed, seems in harmony with the policy of the Homestead Acts. See 3 FREEMAN, EXECUTIONS, 3 ed., § 440. It should make no difference which mortgagee first seeks to foreclose. Applying this doctrine to the present case: the first mortgage is for $2500; the value of the property is $7200; the $4700 left is entirely covered by the homestead exemption. As the second mortgage is good only to the extent of any excess, and there is no excess, it should be held invalid.